

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 175 OF 2016

PRISMA (HK) LIMITED

.. Petitioner

Vs.

UIC Corporation Private Limited

.. Respondent

Mr.Kumar Tolani for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH JUNE 2018

P.C.

1 The petition is filed for winding up of respondent company – UIC Corporation Private Limited (the company), on the ground that it is unable to discharge its debt and is commercially insolvent.

2 On 5th March 2018, when the petition was taken up for admission, the following order came to be passed :-

“1 By this petition, petitioner is seeking winding up of respondent company-UIC Corporation Pvt. Ltd. (the company) under the companies Act, 1956.

2 It is the case of petitioner, as it appears from the petition that petitioner and company had entered into an oral agreement whereby petitioner agreed to sell to the company diverse quantities of PVC Resin SG-5 (goods). Petitioner, based on this agreement, opened letters of credit in favour of the supplier of the goods. The payment was to be made by the company on D/P basis namely documents against payments. The last shipment payment terms was changed from Documents against Payment (D/P) to Delivery against Acceptance (D/A) basis. The company undertook and assured to make payment of the said bill of exchange (B/E) to be changed to D/A basis within 30 days from the date of B/E. The goods were shipped in three shipments/covered by five bills of lading. The first shipment was for goods worth US\$ 5,41,800.00; the second shipment was for

US\$ 5,02,248.60 and the third shipment was for US\$ 5,58,054.00.

3 Petitioner thereafter forwarded the documents including bills of exchange drawn on the company favouring, in the first case, UCO Bank, (Kowloon Branch) Hong Kong HK; in the second shipment, Indian Overseas Bank, Hong Kong HK and in the third shipment, HBZ Finance Ltd. Kowloon, Hong Kong. The documents were forwarded by these three banks to SBI, the designated bank of the company, for release of documents on payment. The goods arrived between August and December 2013. The company filed various bills of entires with the Customs Authority. So far as the first consignment is concerned, the documents covering three bills of lading were collected by the company and part payment of US\$ 3,25,050/- was made on 4th October 2013. So far as the remaining two documents, Mr. Tolani states that in the petition, petitioner has restricted this petition only to the extent of the two consignments covered under the Indian Overseas Bank Documents and HBZ Finance Ltd. Documents. It is stated in the petition that the company cleared the goods covered under the five bills of lading which were sent under D/P through Indian Overseas Bank without surrendering the original bills of lading to the Shipping Line. It is stated that the company lodged false report about loss of bills of lading and based on that report, went and collected delivery orders from the Shipping Lines' agents. The goods covered by the first consignment under the five bills of lading sent through HBZ Finance Ltd. KK, the agreement was modified and was changed to 30 days D/A from bill of exchange date and thereafter, the company collected the documents upon signing the bills of exchange and cleared the goods. After clearing the goods, the company has failed and neglected to pay any amount.

4 It is the case of petitioner that the company is yet to pay a sum of US\$ 10,60,302.60, despite assurances. It is also stated that the petitioner has also lodged a complaint with Economic Offences Wing and investigation is in progress. As no payments were coming forth, the petitioner caused a statutory notice issued on 20th November 2014 under the provisions of the Companies Act, 1956. The company has replied to the statutory notice by a letter dated 6th January 2015 but the defences raised are rather strange. In the reply at one point, the company alleges that petitioner delayed the delivery of documents covering the three consignments, then it says instead of payment on Acceptance (D/A) forwarded the documents on delivery on

payment (D/P), and then it says by changing the terms of payments from D/P to D/A caused delay in clearance of consignment resulting in loss to the company. The company is totally silent about the US\$ 3,25,050/- that it paid to petitioner. At paragraph 9 to the statutory notice, petitioner expressly stated that the balance dues for the first consignment, which is not the subject matter of the petition, is US\$ 2,16,750.00 but in the reply to the statutory notice, there is no reference to any payment made. It is simply stated "the contents are misleading and false".

5 More than three years after replying to the statutory notice, respondent has filed affidavit in reply dated 16th January, 2018, which contains further contradictions. The stand now taken by the company is different from the stand taken in reply to the statutory notice. Firstly, the company states that there was a mutual oral agreement whereby the company was to sell the exported material and after deducting all expenses incurred by the company during transportation period, the company would pay the remaining amount later and petitioner had agreed to pay cost of services as a form of profit at the rate of Rs.5/- per kg. This stand has not been taken in the reply to the statutory notice. It is also stated that the material received was bad in quality and hence part of the material is still stored in the destination godown of the company and petitioner was informed about the bad quality and petitioner assured to bear all expenses. This is also taken up for the first time. Then the next point is on the assurance of petitioner, the company had borne all the expenses including transportation charges, ICD charges, ground rent charges, clearance charges and detention charges, etc. and also paid import duty now petitioner is denying repaying any of the charges to the company. This again is taken up for the first time. The next stand taken in the affidavit in reply is the company has paid the entire cost of shipment to the foreign exporter, viz., one M/s. Star Impex and has received NOC from M/s. Star Impex to the effect that the consideration was entirely paid and they have no objection for clearance of the consignment. This is not only contradictory to the earlier stands taken but also is taken for the first time in the affidavit in reply. The next defence is false statement made in the affidavit in which it is stated that the company has filed a suit in the City Civil Court and petitioner had filed written statement after two years delay. Admittedly, petitioner is not even a party to the said suit.

6 In the affidavit in reply, on the one hand, the company states

that they were to sell the goods and after adjusting all cost plus Rs.5/- per kg as profit, had to pay back the balance amount to petitioner. At the same time, the company states that they have paid the exporter M/s. Star Impex who gave them NOC to the effect that consideration was entirely paid. The company states that the goods supplied were of bad quality and part of it is still stored. Again no evidence and raised for the first time.

7 Therefore, it is rather obvious that the defences raised by the company are afterthoughts, moonshine, bogus and has to be rejected. There is nothing on record to even indicate that the company is financially sound.

8 In the circumstances, I am prima faice satisfied that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.....”

3. The Court has considered the reply 6th January 2015 to the statutory notice dated 20th November 2014 filed by the advocate for respondent and also the affidavit in reply dated 16th January 2018, i.e., filed pre-admission and rejected the stand taken by the company. No further affidavit has been filed by the company.

4. Petitioner has filed an affidavit of one Pandurang Bhiwaji Shelar, affirmed on 4th June 2018 confirming advertising in Free Press Journal and Navshakti on 12th April 2018 and in the Maharashtra Government Gazette for the period April, 19-25, 2018 at Sr.No.1817. A report dated 3rd May 2018 from the company department is on record stating that the registry has neither received the undelivered packet of the said notice nor the acknowledgement receipt. However, as per the on-line status of the

tracking report from the official website of the postal authorities, the remark dated 26th March 2018 shows that “Item delivered”.

5. Having considered the petition, documents annexed thereto, also considered the reply to the statutory notice and affidavit in reply, I am satisfied that the company is unable to discharge its debt and requires to be wound up.

6. Petition, therefore, is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) the Respondent Company UIC Corporation Private Limited be wound-up under the provisions of the Companies Act, 1956 by and under the orders and directions of this Hon'ble Court.

(b) the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as the Liquidator of the Respondent Company with all requisite powers and authorities under the provisions of the Companies Act, 1956.”

7. Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification.

8. Upon receipt of the authenticated copy from petitioner's advocate, the official liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in

consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the official liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

9. The company petition accordingly disposed.

**Shraddha
Kamlesh
Talekar**

Digitally signed by
Shraddha Kamlesh
Talekar

Date: 2018.07.21
19:09:55 +0530

(K.R. SHRIRAM, J.)